IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 635 OF 2003

Smt. Shantibai Bhau Hadwale ..Appellant

versus

Dagdu M. Borchate & Anr. ..Respondents

Mr. S. A. Sawant for the Appellant.

Mr. M. P. Tiwari for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 2ND MAY,2005

ORAL ORDER :

1. Heard learned counsel for the appellant and the respondents.

2. Respondent No.1 was the 0riginal plaintiff. He filed a suit against his sister Sakubai for possession of the suit room which is 10’ x 10’. Sakubai filed her written statement contending that she was tenant of the premises and she had allowed plaintiff to occupy the premises with her. Therefore, according to her the plaintiff was Sakubai’s gratituous licensee. During the pendency of the suit, Sakubai died. Her daughter the present

appellant was brought on record and she raised certain defences. The trial court disbelieved all those defences and decreed the suit, hence this Appeal.

3. Mr. Sawant for the appellant contended two contentions mainly. Firstly, according to him Sakubai was occupying the suit premises as a tenant since before 1973 and therefore she was a protected tenant under Section 15A of the Bombay Rent Act and after her death the appellant succeeded to her rights. Secondly, he contended that the suit property was declared as a slum and therefore under Section 22 of the Maharasthra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971, (hereinafter referred to as the "Slum Act 1971") was a bar against the plaintiff in institution of the suit. According to him the trial court gave wrong findings and reasonings in respect of the aforesaid two matters and thereofre the judgment was liable to be set aside.

4. As against this, counsel for the respondents contended that though in the written statement defence was raised by the appellant that the property was a slum area, no notification was tendered or produced before the trial court which is now being done by the appellant. He also contended

that if according to the appellant and as per the notification of the Government of Mahrashtra dated 19.2.1976, Survey No. 37/3 is the survey number where the suit property was situate then nowhere in the pleadings i.e. either in the plaint or in the written statement there is reference to this survey number nor anybody has pleaded that the suit property or suit room stands on survey No. 37/3. Therefore according to him there is no factual basis to hold that the suit property was covered by this notification and therefore bar under Section 22 would not apply.

5. Secondly, counsel for the respondents contended that Sakubai though she was the tenant and the plaintiff was gratuitous licensee was out right rejected by the court and now the appellant's contention that Sakubai was the sub tenant of the plaintiff, there was no documentary proof with the appellant in that record. Mere possession howsoever wrong cannot cloth with any right in the property. If her deceased mother had no legal or contractual rights in the property, therefore no interference was called for in the impugned judgment and decree.

6. Mr. Sawant has produced during his arguments the aforesaid notification of the Government of Maharasdhtra dated 19.2.1976 declaring

area as slum. According to him Survey No. 37/3 area 1.1 Acres at Bhatwadi, Ghatkopar (West) is declared as slum and the suit property falls in that area. Therefore Section 22 will be a bar against the plaintiff in institution of the suit.

7. It is true that Section 22 lays down certain restrictions upon institution of suits in certain contingencies and by certain persons. But whether section 22 is attracted in the present case will have to be decided first and in order to attract this section 22, as argued by Mr. Sawant, it would be necessary to find out whether there is anything on record to hold that the suit structure falls in Survey No. 37/3, and I have no hesitation to hold that neither in the plaint nor in the written statement nor in any evidence of any of the parties, there is anything on record to suggest much less to prove that the suit structure falls in Survey No.37/3. The plaintiff had filed a suit for possession of a particular room as described in the plaint. It was not necessary for him to state about survey number in which the suit property was situate. The Defendant filed their written statement without reference to any survey number. None of the persons who were examined in court had any occasion to state the Survey number upon which the suit property was situate. Therefore, there is

no evidence at all and no pleadings at all to show that the suit property was situate on Survey No. 37/3. If anybody has raised such a plea, then he would have been required to prove it by documentary evidence, maps etc. There are no pleadings and no evidence and it cannot be inferred nor presumed that merely because survey No. 37/3 is declared as a slum, the suit property also presumed to be standing on Survey No. 37/3. Therefore, in the absence of any pleadings or specific evidence in that regard by the defendant and/or in the absence of any evidence, the contention of Mr. Sawant cannot be accepted. However, the basic requirement of attracting section 22 is that the property must fall within slum and since that basic requirement is not proved, this objection is also required to be rejected.

8. Second contention of Mr. Sawant was that appellant is protected tenant because she was in possession in 1973 and therefore she gets protection under Section 50 of the Rent Act. As against this, counsel for the respondents contended that the original defendant - the mother of the present appellant had not claimed to be the tenant of the plaintiff. In fact she was asserting herself to be a tenant. There was no proof with her that she was the tenant of the premises whereas on the contrary plaintiff had ample proof to prove that he was the

tenant. Similarly the present appellant who led evidence in support of her defence and contentions, could not produce any documents to show that the plaintiff had ever regarded or accepted the appellant's mother as tenant, no document with the appellant that appellant's mother ever paid any rent to the plaintiff for the suit premises. Therefore, this is a case where the appellant is unable to prove any relationship of landlord and tenant between original defendant and the plaintiff. Mere statement on oath, in such a situation, cannot be accepted as proof of contractual relationship between the parties. Therefore when the original defendant could not prove her relationship with the plaintiff as sub-tenant, then mere occupation by the appellant of the suit premises in 1973 does not give her any protection under the Rent Act. This contention therefore is required to be rejected.

9. In short to sum up, there is no merit in this appeal, the appeal is dismissed with costs. Prayer for stay on the ground that there are summer vacation in the near future, is rejected, because the appellant is found to have no case at all worth protecting her interest.

2.05.2005 (D.G. DESHPANDE, J.)